IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19179 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMILABEN RAOJIBHAI PATEL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR UM SHASTRI for Petitioner(s) : 1,
MRS FALGUNI PATEL A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 07/08/2007

ORAL JUDGMENT

1. **RULE**. Mrs. Falguni Patel learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates for the respective

parties, the matter it taken up for final hearing today itself.

2. The petitioner has approached this Court to obtain appropriate direction on the respondents to enter the name of the petitioner in the birth register and to issue birth certificate to her. It is the case of the petitioner that she was born on 3rd May, 1951. However, due to inadvertence on the part of the parents, her birth could not be registered in the official record maintained under the Births and Death Registration Act. The petitioner however had no knowledge that her birth was registered in the official record. She, therefore, approached respondent no. 2 with an application on 13th April, 2007 for obtaining birth certificate, but she was informed that her birth was not registered in the year 1951 and it was not possible to give birth certificate. She, therefore, requested to make necessary entry and issue birth certificate, but that request has been turned down. Hence, she has approached this Court.

3. I have heard Mr. U.M. Shastri learned advocate for the petitioner and Mrs. Falguni Patel learned A.G.P., for the respondents. Mr. Shastri has submitted that respondent no. 2 has power to enter the birth date of the

petitioner in its official record i.e., birth register and issue certificate on that basis. In support of his say he has placed reliance on the decision of this Court rendered in the case of **Dipika Arvindkumar Pancholi v. State of Gujarat & Anr., reported in 2003 (1) GLH pg. 514**. Mrs. Patel is not in a position to controvert this position. I have perused the said decision. It is held as under :-

> "Applying the principles laid down by the Supreme Court as well as this Court in the above referred to judgments to the facts of the present case, it is seen that in clear terms the Supreme Court has held that if we interpret the statute the result of it may be unjust, however, it does not entitle the court to refuse to give it effect and this is a classic case of *casus omissi*, that is, circumstances concerning which the Act is silent. Therefore, the said power envisaged under Rule 11 of the Rules can be legitimately extended to the power to enter the name of the child even after a period of 15 years on the application of the parent or guardian of the child. If there is power with the Registrar to enter the name of the child after a period of 12 months and within 15 years from the date of registering the date of birth as per the proviso to Rule 11 of the Rules on the request of the parents or guardian of the child. I read that there is also a power with the Registrar to enter the name of the child even after the period of 15 years. In my opinion, it is not the case of total absence of power in the Registrar and therefore, the application of the petitioner should have been entertained by the registrar by entering the name of the child in the Registrar. I am, therefore, of the opinion that this is a fit case where power ought to have been exercised by the Registrar under Section 14 of the Act read with Rule 11 of the Rules by entertaining the application submitted by the father of the petitioner by adding name of the petitioner as

requested in the application on payment of late fee of Rs.2/- or any amount of late fee as may be prescribed by the authority."

4. In view of the aforesaid, respondent no. 2 is directed to accept the application of the petitioner and upon due scrutiny of the application as well as the material furnished by the petitioner in support of the application and if, everything is found proper, enter the name of the petitioner in the register on payment of late fee and issue birth certificate on the basis of the same. The petitioner shall make the application within 30 days from the date of this judgment and thereafter, respondent no. 2 will take appropriate decision thereon and further action within four weeks of the receipt of the application.

5. The petition is allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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